

TAMMY L. SHIPMAN
Claimant

BOEING COMPANY
Respondent

AMERICAN MANUFACTURING MUTUAL INS. CO.
INDEMNITY INS. CO. OF NORTH AMERICAN
Insurance Carriers

ORDER

APPEARANCES

RECORD AND STIPULATIONS

ISSUES

The ALJ denied claimant's request for a weight loss program. The ALJ seemed to reason that because claimant's injury was not the cause of her weight gain, and that respondent should not be required to provide a weight loss program to alleviate claimant's low back pain.

The claimant requests review of this denial and alleges the ALJ's focus on claimant's pre-injury weight is misdirected. Rather, claimant maintains that both Drs. Patton and Stein agree that losing weight would likely alleviate claimant's symptoms. Thus, K.S.A. 44-510(a)¹ compels the Board to reverse the ALJ's Order and grant claimant's request for a structured weight loss program.

Respondent maintains that the claimant has failed to establish that her present need for a structured weight loss program is causally related to her 2002 work-related injury. Accordingly, the ALJ's Order denying claimant's request should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board finds the ALJ's Post-Award Medical Order should be reversed.

Claimant suffered a compensable injury in 2002 and since the entry of her Award, she has been receiving post-award medical treatment with Dr. Paul Stein, the authorized treating physician. Dr. Stein recommended a series of 3 epidural injections, which were performed over a 6 week period and provided some short-term relief. When those injections did not provide any significant relief, Dr. Stein concluded that claimant was not presently a surgical candidate, but would benefit from weight loss along with a long-term strengthening program for her back and abdominal muscles.² Dr. Stein also indicated (through a written report) that it would be in claimant's "best interest to have a structured weight reduction program with medical direction, such as that available through Via Christi St. Francis or Wesley Medical Center".³ He indicated that claimant needed to get her weight down to at least 130 pounds.⁴ Dr. Stein's subsequent reports indicate that he does not believe claimant's weight gain was caused by her injury and was quite likely preexisting.⁵

Claimant's private physician, Dr. J. Michael Patton, has also offered opinions on this issue. His medical records indicate a gradual weight gain over two decades and from 2002 forward claimant's weight has fluctuated around 200 pounds. He also testified that

¹ The Kansas legislature repealed K.S.A. 44-510(a) in 2000 and replaced it with 44-510h, therefore from here out all references will be to 44-510h.

² P.A.H. Trans. (Dec. 11, 2008), Cl. Ex. 1 at 3 (Dr. Stein's Aug. 19, 2008 Report).

³ *Id.*, Cl. Ex. 1 at 2 (Dr. Stein's Oct. 20, 2008 Report).

⁴ Claimant is presently 50 years old and by her own testimony, has not weighed 130 pounds since the 1990's. (*Id.* at 10).

⁵ *Id.*, Cl. Ex. 1 at 1 (Dr. Stein's Nov. 30, 2008 Report).

claimant's low back problems inhibit her ability to exercise effectively and that she would benefit from a highly structured weight-loss program.⁶ Dr. Patton even suggested that claimant would be best suited for a program designed by Dr. James Early, Solutions for Life, a program that includes not only exercise but counseling and medical weight loss management.

Respondent was unwilling to provide claimant with the recommended weight loss program as it contends that claimant was overweight before her injury (based upon Dr. Patton's records) and remains so today, independent of her work-related accident. Following the preliminary hearing, the ALJ rejected claimant's request, apparently adopting respondent's view:

On August 11, 2009, the [c]laimant testified that when she injured her back in 2002, she weighed 150 pounds. Medical records of her family physician, Dr. J. Michael Patton document her weight at that time at 191 pounds.

Dr. Patton did not think that the [c]laimant's back injury caused her to gain weight. The [c]laimant's request for a weight loss program is denied.⁷

There is no dispute that claimant is entitled to further medical care if she can establish that her present complaints are causally related to her work-related injury.⁸ The statute provides in pertinent part:

It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion so orders, . . . as may be reasonably necessary to cure and relieve the employee from the effects of the injury.⁹

K.S.A. 44-510h, as noted above, requires that employers provide such medical treatment as is "reasonably necessary to cure and relieve the employee from the effects of the injury." The case law interpreting this language has consistently found that the

⁶ Patton Depo. at 10-11.

⁷ ALJ Order (Dec. 21, 2009).

⁸ K.S.A. 2008 Supp. 44-510h.

⁹ *Id.*

statute contemplates the employer being responsible for all medically reasonable treatment which is designed to relieve the employee's symptoms, arising from the injury.¹⁰

Here, the medical evidence is unanimous. Both physicians have opined that claimant would benefit from a weight loss program. And while claimant may have weighed more *before her accident* than is ideal for someone with low back issues, that does not invalidate the uncontroverted medical opinion that claimant's symptoms would, in all likelihood, be relieved were she to lose weight. Based on this record, the Board finds the ALJ's decision should be reversed.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Post Award Medical Order of Administrative Law Judge John D. Clark dated December 21, 2009, is reversed and respondent is directed to provide claimant with the weight loss program outlined by Dr. Stein, the authorized treating physician.

IT IS SO ORDERED.

Dated this _____ day of March 2010.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Roger A. Riedmiller, Attorney for Claimant
Eric K. Kuhn, Attorney for Respondent and its Insurance Carriers
John D. Clark, Administrative Law Judge

¹⁰ See *Carr v. Unit No. 8169*, 237 Kan. 660, 703 P.2d 751 (1985); *Horn v. Elm Branch Coal Co.*, 141 Kan. 518, 41 P.2d 751 (1935).